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In The

SUPREME COURT OF THE UNITED STATES

October Term, 1972

72-596

No. A-264

EMIL F. ADAMS, ET AL,
Petitioner

vs.

EVANSVILLE-VANDERBURGH SCHOOL CORPORATION, ET AL.,
Respondent

PETITIONER'S APPENDIX

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No. 72-1413

UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

EMIL F. ADAMS, et al.,

Plaintiffs-Appellants,

vs.

EVANSVILLE VANDERBURGH SCHOOL CORPORATION, et al.,

Defendants-Appellees.

Appeal from the United States District Court for the Southern District of Indiana, Evansville Division (EV 71 C 81)

Before SWYGERT, Chief Judge, CUMMINGS, Circuit Judge, and PELL, Circuit Judge.

The Plaintiffs, who are parents of White children attending predominatly White schools, filed their application for injunction in a state court in Vanderburgh County, Indiana, later removed to the United States District Court for the Southern District of Indiana to enjoin the Defendant School Corporation and its Board of Trustees from implementing a school desegregation plan to become effective in September, 1972, providing in part for the reassignment and transporting (busing) of some White and Negro children in four (4) elementary grade schools in the Defendant School Corporation, and the closing of three inadequate schools, one attended by only 108 children and the other two attended by predominatly Negro children, and consequent reassigning and transporting (busing) of children from those and other schools, in both cases to achieve a better educational opportunity for the school children involved and to insure that these schools will become racially mixed with the percentage of Negroes not greater than 30%.

The hearing on Plaintiffs' request for temporary injunction was combined with the hearing on the merits, with the consent of the parties, and the Court entered its Order following a one-day trial, denying the application for injunction.

The Court below found it did not have to determine whether the Defendant School Corporation operated a de jure or de facto school system, since the School Board had the right to take steps to lessen racial imbalance in the schools, regardless of whether it could be forced to do so, to remove any "vestiges of state-imposed segregation". **Swann v. Charlotte-Mecklenburg Board of Education**, 402 U.S. 1, 15 (1971).

The Court below correctly relied on the **Swann** case, supra, in upholding the right of the School Board to adopt a desegration plan. The **Swann** case reaffirms the constitutional right of the Defendant School Board to take these steps to lessen segregation in its schools, as follows:

> "School authorities are traditionally charged with broad power to formulate and implement educational policy and might well conclude, for example, that in order to prepare students to live in a pluralistic society each school should have a prescribed ratio of Negro to white students reflecting the proportion for the district as a whole. To do this as an educational policy is within the broad discretionary powers of school authorities; absent a finding of a consitutional violation, however, that would not be within the authority of a federal court. **Swann**, 402 U.S. at 16."

Prior decisions of this Court have also upheld the legality of voluntary desegregation of school children and teachers as well, as a proper exercise of discretion by a school board. **Banks v. Muncie Community Schools**, 433 F.2d 292, (7th Cir. 1970); **Burns v. Board of School Commissioners of the City of Indianapolis**, 437 F2d 1143 (7th Cir. 1971).

Furthermore, lessening segregation in the public schools is specifically authorized by Indiana statutes. Indiana Code of 1971, §20-8-6-2. Burns Indiana Statutes, Ann., §28-6107, provides that: "Such [school] officials may take any affirmative actions that are reasonable, feasible and practical, to effect greater integration and to reduce or prevent segregation or separation of races in public schools, from whatever cause. Such actions may include, but not necessarily be limited to,. . .revision of school districts . . .or enrollment policies to implement equalization of educational opportunity for all".

Plaintiffs' position is without merit, and the decision of the Trial Court is hereby affirmed without oral argument, pursuant to Circuit Rule 22.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
EVANSVILLE DIVISION

EMIL F. ADAMS, et al., *Plaintiffs-Appellants,*	)	*Appeal from* the United States District Court for the Southern District of Indiana, Evansville Division (EV 71 C 81)
vs.	)	
EVANSVILLE VANDERBURGH SCHOOL CORPORATION, et al., *Defendants-Appellees.*	)	

MEMORANDUM OF DECISION

This action was filed December 6, 1971, in the Circuit Court of Vanderburgh County, Indiana, by certain taxpayers and residents of the Evansville-Vanderburgh School Corporation, an Indiana public school corporation (the "Defendant School Corporation"), and by their children attending schools operated by the Defendant School Corporation applying (1) for an injunction to enjoin the School Corporation applying (1) for an injunction to enjoin the school corporation and the members of its Board of School Trustees, its governing body, (the "Defendant Board"), from implementing a Plan of Desegregation and Reorganization (the "Plan") adopted by the Defendant Board on November 17, 1971, and (2) for an order declaring the Plan void.

This action was removed to the United States District Court for the Southern District of Indiana, Evansville Division, on December 21, 1971, and a motion for remand of the action was overruled on February 10, 1972.

Pursuant to order of this Court, a hearing on Plaintiffs' request for temporary injunction was held at Evansville, Indiana, on Thursday, February 24, 1972. At the conclusion of the hearing, the parties stipulated that the trial of the action on the merits should be advanced and consolidated with this hearing on the request for a temporary injunction, and the Court ordered such advancement and consolidation.

The Court has considered the testimony and exhibits taken in evidence at the hearing, the trial memorandum of the Defendants, the post-trial arguments of counsel, and now files its its findings of fact and conclusions of law in the form of this memorandum. Rule 52(a), Federal Rules of Civil Procedure.

I

General

This is an action asserting rights of the Plaintiffs under the equal protection clause of the 14th Amendment to the United States Consitution which prohibits any state from denying any person within its jurisdiction the equal protection of the laws and under Article 1, Section 23, and Article 8, Section 1 of the Indiana Constitution forbidding the "Indiana General Assembly from granting any citizen or class of citizens privileges or immunities which, upon the same terms, shall not equally belong to all citizens," and requiring it to provide for "a general and uniform system of Common Schools * * * * * equally open to all."

The Court has jurisdiction of the federal claims under Title 28 United States Code, §§ 1343(3) and (4), and Title 42 United States Code § 1983. The state and federal claims derive from a common nucleus of operative fact and are such as Plaintiffs would ordinarily expect to try in one judicial proceeding. The federal issue is substantial. The Court has jurisdiction of all the issues raised in this action. U.M.W. v. Gibbs, 383 U.S. 715.

1. The Defendant School Corporation operates all the public elementary and secondary schools in Vanderburgh County, Indiana, consisting of five (5) high schools in grades 9-12, and thirty-seven (37) elementary schools in grades K-6 or

K-8, three (3) of which will, under the Plan, be closed for the 1972-73 school year.

2. Plaintiffs are of the white or Caucasian race and the Plaintiffs, who are students, attend Columbia, Delaware, Baker and West Terrace elementary shcools now operated by the Defendant School Corporation. Plaintiffs bring this action on behalf of themselves and all white students who will or could be transferred from the school which they now attend or could or will be affected under the Plan by a change in the racial makeup of the schools which they attend.

3. The Plan in substance provides for:

(a) Exchange of students between Lincoln, Baker, Columbia and Delaware elementary schools.

(b) Closing of Armstrong, Stanley Hall and Wheeler elementary schools, and the assignment of the students now attending these schools to other schools operated by the Defendant School Corporation.

(c) A reassignment of certain students now attending the Howard Roosa elementary school.

4. Details implementing the Plan have not been approved by the Defendant Board, but have been prepared by its administrative staff and submitted on February 17, 1972, to the Defendant Board for approval. Under such proposal the percentage of Negro students attending each of the elementary schools of the Defendant School Corporation for the three (3) school years preceding the implementation of the Plan and the projected number of Negro students attending the Defendant School Corporation's elementary schools after the implementation of the Plan is as follows:

Elementary Schools	1969-70 Grades K-6 or 8	1970-71 Grades K-6 or 8	1971-72 Grades K-6 or 8	*1972-73 (Projected Grades 1-8)	*1972-73 (Projected Grades K-8 where difference between Grades 1-8 and K-8 is significant)
Armstrong	0	0	0	Abandoned	
Baker	8.68	7.74	6.7	29.8	26.5
Caze	0	0	0	6.5	
Cedar Hall	19.8	16.73	18.34	22.2	
Columbia	.47	.48	.81	29.5	27.0
Culber	14.7	20.00	20.45	17.5	
Cynthia Heights	.7	.45	.39	.4	
Daniel Wertz	2.4	1.85	1.88	2.1	
Delaware	11.9	10.39	11.72	30.5	26.8
Dexter	1.51	3.28	6.12	3.3	4.9
Evans	0	0	0	6.4	
Fairlawn	0	0	0	4.9	
Fulton	4.6	4.0	5.83	4.4	
Glenwood	24.7	23.25	24.51	28.3	
Harper	3.9	5.95	6.19	3.2	5.7
Harwood	1.4	1.36	1.18	4.2	
Hebron	4.01	4.11	5.06	4.9	
Helfrich Park	1.5	1.02	.81	9.0	
Highland	0	0	.15	5.9	
Howard Roosa	31.1	37.9	38.63	18.5	
Lincoln	99.4	99.83	99.82	29.5	36.9
Lodge	1.7	1.68	1.65	5.5	
McGary	2.4	.92	.68	6.8	
Oak Hill	0	.10	.25	.3	
Perry Heights	0	.85	.80	9.3	11.0
Plaza Park	0	0	0	5.9	
Scott	0	0	0	0	
Stanley Hall	48.4	51.27	59.94	Abandoned	
Stockwell	Not opened	Not opened	0	20.1	
Stringtown	0	.23	0	6.2	
Tekoppel	.13	.14	0	9.0 9.1	9.1
Thompkins	Not opened	Not opened	.66	4.9	
Vogel	1.2	10.8	.63	5.3	
Washington	1.8	3.06	4.17	5.1	5.8
West Terrace	0	.39	.50	9.4	
Wheeler	74.9	79.19	76.04	Abandoned	
White	8.5	6.84	13.66	12.6	

* The columns assume implementation of November 17, 1971 Plan and exclude special education children and those effected by the voluntary transfer plan. They further assume that kindergarten students will attend the closest schools with adequate to excellent facilities.

5. The primary purpose of the exchange of students between Lincoln, Baker, Columbia and Delaware schools is to reduce the percentage of Negro students attending Lincoln School. Wheeler and Stanley Hall schools are being closed because they are antiquated and educationally insufficient, and Armstrong school, because of its size, is inefficient. Wheeler and Stanley Hall schools are two (2) of the five (5) schools which have been recommended for closing by an Advisory Committee to Evaluate Inner-city Elementary School Buildings appointed by the Defendant Board. These two (2) schools were chosen for immediate closing under the Plan since they had a high percentage of Negro students, and all three (3) schools are to be closed since there had been a decrease in enrollment in the Defendant School Corporation and an excess of fifty (50) elementary classrooms with the opening of two (2) new schools, Stockwell and Thompson, within the last two (2) years. The assignments of the students attending Stanley Hall and Wheeler schools are to be made insofar as possible so that the students will attend elementary schools in the same districts as the high schools they will be attending and to achieve a greater distribution of Negroes among the Defendant School Corporation's elementary schools.

6. The Plan provides for reassigning and transporting both white and Negro children. All the elements of the Plan are made to provide more equal educational opportunities for the students in the schools in which changes in attendance areas are to be made, to eliminate elementary schools at which there is a predominately Negro enrollment. The total net savings to the Defendant School Corporation by the closing of Wheeler, Stanley Hall and Armstrong schools is $60,000 annually, taking into consideration the transportation necessitated by the Plan and its implementation.

7. The changes contemplated by the Plan, including in particular the change in racial balance in the Defendant School Corporation's elementary schools, are valid objectives from an educational standpoint. Swann v. Charlotte-Mecklenburg Board of Education, 402 U.S. 1.

8. This Court finds it unnecessary to a disposition of this

action, and does not make, any finding as to whether Defendant School Corporation retains any vestiges of a de jure segregated school system.

9. None of the following constitute a violation of Plaintiffs' rights or of the class they represent under either the Constitution of the United States or the Indiana Constitution: (1) the adoption of the plan; (2) the proposed implementation of the Plan; (3) the transfer of white or Negro students as proposed in the implementation of the Plan; (4) the closing of Armstrong, Wheeler and Stanley Hall elementary schools; (5) the transportation of white students or Negro students to effect a more even percentage distribution of Negro students in the elementary schools of the Defendant School Corporation; or (6) the change in the racial makeup of any school to effect a more even distribution of Negro students in the elementary schools of the School Corporation. Any school closing or transfers to effect the above are, insofar as Plaintiffs are concerned, or the class they represent, within the discretion of the Defendant Board in carrying out its duties in administering the educational affairs of the Defendant School Corporation.

II.

Order of the Court

It is hereby ORDERED that the application of the Plaintiffs under the United States Constitution or under the Indiana Constitution to enjoin the Defendant School Corporation or the Defendant Board from implementing the Plan, from closing Armstrong, Wheeler and Stanley Hall schools, and from transferring or assigning white or black students to effect a more even percentage distribution of Negro students in the school corporation's elementary schools, and the application of Plaintiffs to declare the Plan void, are hereby denied.

It is finally ORDERED AND ADJUDGED and the Plaintiffs pay the costs of this action.

Entered this 13th day of March, 1972, as per oral findings and order of February 24, 1972.

S. Hugh Dillin, Judge

28-6106. Equal educational opportunities – Segregation in schools and colleges prohibited. It is hereby declared to be the public policy of the state of Indiana to provide, furnish, and make available equal, nonsegregated, nondiscriminatory educational opportunities and facilities for all regardless of race, creed, national origin, color or sex; to provide and furnish public schools and common schools equally open to all and prohibited and denied to none because of race, creed, color, or national origin; to reaffirm the principles of our Bill of Rights, civil rights and our Constitution and to provide for the state of Indiana and its citizens a uniform democratic system of common and public school education; and to abolish, eliminate and prohibit segregated and separate schools or school districts on the basis of race, creed or color; and to eliminate and prohibit segregation, separation and discrimination on the basis of race, color or creed in the public kindergartens, common schools, public schools, colleges and universities of the state. [Acts 1949, ch. 186, § 1, p. 603.]

Prior Burns': § 28-5156.

Title of Act. The title of Acts 1949, ch. 186, reads: "An act establishing a public policy in public education and abolishing and prohibiting separate schools organized on the basis of race, color or creed, and prohibiting racial or creed segregation, separation or discrimination in public schools, colleges and universities in the state of Indiana and prohibiting discrimination in the transportation of public school pupils and students." In force September 10, 1949.

Cross-Reference. The elementary and high schools of the state shall be open to all children until they complete the course of study, § 28-6105.